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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,384	10/06/1999	WILLIAM R. WHEAT	31223-74058	1958

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17
EXAMINER

JACKSON, MONIQUE R

ART UNIT

PAPER NUMBER

1773

DATE MAILED: 09/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/413,384

Applicant(s)

WHEAT ET AL.

Examiner

Monique R Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6-10,27,28,31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-10,27,28,31 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. The amendment filed 7/11/03 has been entered. Claims 1, 2, 4, 6-10, 27, 28, 31 and 32 are pending in the application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 1-2, 4, 6-10, 27, 28, and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peiffer et al (USPN 6,086,982.) Peiffer et al '982 teach a biaxially oriented polypropylene packaging film comprising a base ply essentially consisting of an isotactic propylene polymer having at least 90% by weight, in particular 98 to 100% by weight of propylene units and the corresponding comonomer content of not more than 10% by weight, or 0 to 2% by weight, ethylene (*wherein 0 to 2% by weight encompasses the instantly claimed ranges of less than 1 weight percent, 0.05 to 0.8 wt%, 0.1 to 0.2wt%, and 0.5 to 0.7wt%; Abstract; 4:11-23.*) In a preferred multilayer embodiment, the polypropylene film comprises at least one top ply or if necessary top plies on both sides, composed of polymers of α -olefinic polymers having 2 to 10 carbon atoms, such as propylene homopolymer, copolymer of ethylene and propylene (EP), or terpolymer of ethylene and propylene and 1-butylene (EPB), wherein the Examiner notes that EP and EPB are heat-sealable thermoplastic polymers (Col. 5:57-6:37.) Preferred embodiments of the polypropylene film according to the invention are three-ply wherein the structure, thickness and composition of a second top ply can be chosen independently of the top ply already present (7:1-14.) The thickness of the top ply or plies is generally greater than 0.1 μ m and is preferably in the range of 0.1 to 10 μ m (*which reads on "said surface layer has a thickness within the range*

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of 0.3 microns to 80 microns" as in instant claim 2; Col. 7, lines 14-18.) The total thickness of the polypropylene film according to the invention may vary within wide limits and depends on the intended use but it is preferably 4 to 100 μm , with the base ply accounting for about 40 to 100% of the total film thickness (*which reads on a core layer within the range of 5 to 150 microns, and surface layers with a thickness less than said core as in instant claims 2 and 9; Col. 7, 28-33.)* Peiffer et al teach that the film is formed by coextruding the layers and then biaxially orienting the coextruded film wherein the film provides improvements over other heat-sealable packaging films (Col. 1-2; Col. 7, lines 36-65.) Therefore, given the teachings of Peiffer et al and the reasonable expectation of success, one having ordinary skill in the art at the time of the invention would have been motivated to utilize a core layer of isotactic propylene polymer with 0-2wt% ethylene, which encompasses the instantly claimed ranges, and a top ply or plies made from olefin polymers such as EP or EPB which are thermoplastic polymers "capable of forming a heat seal with a corresponding thermoplastic polymer upon heating to an elevated temperature and compression", wherein with respect to the inter-layer bond strength, an isotactic core layer comprising up to 2wt% ethylene would provide the inter-layer bond strengths as instantly claimed given that "ethylene in an amount of no more than one weight percent...is effective to provide an inter-layer bond strength" as instantly claimed. Therefore, the Examiner takes the position that Peiffer et al clearly suggest the materials as utilized in the instant invention wherein the instantly claimed inter-layer bond strength enhancement and heat-sealing properties would be expected given that these properties flow naturally from the recited materials.

Response to Arguments

4. Applicant's arguments filed 7/11/03 have been fully considered. Though Applicant's arguments have been found persuasive with regards to a 102 rejection based on Peiffer et al given that Peiffer et al include 0wt% in the preferred range of 0-2wt% ethylene, Applicant's arguments are not persuasive with respect to an obviousness rejection given that the Applicant has not provided a clear showing of unexpected results with regards to the narrower range(s) instantly claimed. The Examiner notes that it is well established in the art that inter-layer bond strength and heat-sealability of polyolefins are directly affected by the melt properties of the polyolefins wherein, with respect to propylene-ethylene polymers, as the ethylene content increases, the melting temperature of the polymer decreases and the heat-sealability/bond strength increases. Given that the Applicant has not provided a showing of unexpected results with regards to the instantly claimed range of no more than 1wt% ethylene, the instant invention would have been obvious over the teachings of Peiffer et al given that Peiffer et al clearly suggest the use of up to 2wt% ethylene. The Examiner also notes that the teachings of Peiffer et al with respect to the isotactic propylene polymer with 0-2wt% ethylene are in fact directed to a core or base ply not to the top ply or plies as argued by the Applicant. Further, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R Jackson whose telephone number is 703-308-0428. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on 703-308-2367. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



MONIQUE R. JACKSON
PRIMARY EXAMINER

Technology Center 1700
September 16, 2003